

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

ALTADIS U.S.A. INC., a Delaware corporation; ALTADIS RETAIL CORPORATION, a Delaware corporation; CUBAN CIGAR BRANDS, N.V., a Netherlands Antilles corporation; and MAX ROHR, INC., a Delaware corporation,

CASE NO.: 02-23124-CIV-UNGARO-BENAGES

Plaintiffs,

vs.

TABACALERA CUBANA CORP., a Florida corporation, TABACALERA POPULAR CUBANA, INC., a Florida corporation, CUBAN REPLICA CIGAR CO., a partnership, proprietorship or other business entity, PEDRO F. GOMEZ, JOEL A. GOMEZ, EDEL GOMEZ, DAIN INMAN and LEO GUTIERREZ

Defendants.

MOTION FOR FINAL SUMMARY JUDGMENT BY DEFAULT

Plaintiffs/Judgment Creditors, CUBAN CIGAR BRANDS, N.V. (“CCB”) and MAX ROHR, INC. (“Max Rohr”) (collectively, the “Judgment Creditors”), pursuant to S.D. Fla. L. R. 7.1, hereby file their Motion for Final Summary Judgment by Default and in support thereof state:

1. On August 6, 2008, the Judgment Creditors filed their Reply to Judgment Debtors’ Response to Motion for Proceedings Supplementary; and Motion for Summary Judgment (the “Motion for Summary Judgment”) [D.E. #130].
2. On August 7, 2008, this Court entered its Notice of Consideration of Motion for Summary Judgment [D.E. #132] placing Defendants/Judgment Debtors, Tabacalera Popular

Cubana, Inc. (“Popular”) and Pedro F. Gomez (“Gomez”) (collectively the “Judgment Debtors”) on notice that it would take the Motion for Summary Judgment and all materials in support and in opposition thereof, under consideration no sooner than September 4, 2008 (the “Notice of Consideration”).

3. The Notice of Consideration required the Judgment Debtors to file a Memorandum in Opposition to the Motion for Summary Judgment on or before August 25, 2008. The Notice of Consideration also required that the Judgment Debtors file a concise Statement of Material Facts as to which they contended there exist genuine issues of fact to be tried in compliance with S.D. Fla. L.R. 7.5(C). The Notice of Compliance warned that should the Judgment Debtors fail to specifically controvert the material facts stated in the Judgment Creditors’ Motion for Summary Judgment, the material facts would be deemed admitted. *See* Notice of Consideration at ¶ 3.

4. Pursuant to Local Rules 7.5(E) and 7.1(C)(1), the Judgment Debtors’ Statement of Material Facts in Dispute was due to be filed no later than August 25, 2008, the same deadline as the Judgment Debtors had to file their Memorandum in Opposition to the Motion for Summary Judgment.

5. To date, the Judgment Debtors have failed to oppose the Motion for Summary Judgment or to controvert any of the material facts raised therein. As a result, pursuant to Local Rule 7.5(D) and the Court’s Notice of Consideration, all the material facts set forth in the Judgment Creditors’ Motion for Summary Judgment should be deemed admitted.

6. In addition, while there are appropriate substantive grounds to grant the Judgment Creditors’ Motion for Summary Judgment, this Court is also now empowered to grant summary

judgment by default based upon the Judgment Debtors failure to respond thereto. *See Decenzo/Reisman/Kellog, M.D., P.A. v. Cespedes*, 711 F. Supp. 612, 613 n.1 (S.D. Fla. 1989).

WHEREFORE, Plaintiffs/Judgment Creditors, CUBAN CIGAR BRANDS, N.V. and MAX ROHR, INC. respectfully request that this Court:

- (a) enter Final Summary Judgment by default in their favor;
- (b) direct the U.S. Marshall to seize the POPULAR trademarks for sale at judicial action to be applied toward the satisfaction of the Judgment Creditors' November 26, 2003 Final Judgment;
- (c) award the Judgment Creditors their costs and attorneys' fees pursuant to §56.29(11); and
- (d) grant such other and further relief deemed just and proper.

Respectfully submitted,

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By: /s/ Jason S. Oletsky
Jason S. Oletsky, Esq.
Fla. Bar No. 009301

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of August 2008, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notice of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notice of Electronic Filing.

/s/ Jason S. Oletsky

Jason S. Oletsky

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